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PREVENTION OF DISCRIMINATION AND PROTECTION OF INDIGENOUS PEOPLES AND MINORITIES

Working paper by Mr. Rajendra Kalidas Wimala Goonesekere on the topic of discrimination based on work and descent, submitted pursuant to Sub-Commission resolution 2000/4

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CONTENTS

		Paragraphs	Page
Introduction		1-7	3
I.	Communities where discrimination based on work and descent is experienced	8-44	4
	A. India	9-27	4
	B. Sri Lanka	28-36	10
	C. Nepal	37-39	11
	D. Japan	40-42	12
	E. Pakistan	43-44	13
II.	Violations against women and children	45-47	13
III.	Concluding remarks	48-50	14

Introduction

1. At its fifty-second meeting the Sub-Commission for the Promotion and Protection of Human Rights in resolution 2000/4 declared that discrimination based on work and descent is a form of discrimination prohibited by international human rights law and decided to entrust Mr. Rajendra Kalidas Wimala Goonesekere with the task of preparing, without financial implications, a working paper on the topic of discrimination based on work and descent in order:

(a) To identify communities in which discrimination based on occupation and descent continues to be experienced in practice;

(b) To examine existing constitutional, legislative and administrative measures for the abolition of such discrimination; and

(c) To make any further concrete recommendations and proposals for the effective elimination of such discrimination as may be appropriate in the light of such examination.

The present report is submitted in accordance with that decision.

2. The Universal Declaration of Human Rights states "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood" (art. 1). In article 2 it is expressly stated that everyone is entitled to all the rights and freedoms without distinction of any kind "such as race ... national or social origin, property, birth or other status".

3. Like other forms of discrimination, therefore, any distinction, exclusion, restriction or preference based on work and descent which has the purpose or effect of nullifying or impeding the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms contravenes the spirit and letter of international human rights law.

4. The International Covenant on Civil and Political Rights recognizes that all persons are entitled to the equal protection of the law "without any discrimination" (art. 26). The International Convention on the Elimination of All Forms of Racial Discrimination specifically prohibits discrimination based on "descent" which the Committee on the Elimination of Racial Discrimination (CERD) has interpreted to mean not solely race but tribal or caste distinctions as well. In its General Recommendation XIV CERD stated that "in seeking to determine whether an action has an effect contrary to the Convention, it will look to see whether that action has an unjustifiable disparate impact upon a group distinguished by race, colour, descent or national or ethnic origin".

5. The International Covenant on Economic, Social and Cultural Rights recognizes the right of everyone "to gain his living by work which he freely chooses or accepts" (article 6, para. 1).

6. The International Labour Organization Discrimination (Employment and Occupation) Convention, 1958 (No. 111) calls on States to "eliminate discrimination based on race ... national extraction or social origin", in the matter of employment or occupation. The United Nations

Educational, Scientific and Cultural Organization Convention against Discrimination in Education of 1960 asserts the principle of non-discrimination in education based on "race ... national or social origin, economic condition or birth".

7. Discrimination based on work and descent is a long-standing practice in many societies throughout the world and affects a large portion of the world's population. Discrimination based on descent manifests itself most notably in caste- (or tribe-) based distinctions. These distinctions, determined by birth, result in serious violations across the full spectrum of civil, cultural, economic, political and social rights. Likewise, the nature of a person's work or occupation is often the reason for, or a result of, discrimination against the person. Persons who perform the least desirable jobs in a society are often victims of double discrimination, suffering first from the nature of the work they must perform and suffering again by the denial of their rights because they perform work that is unacceptable. In most cases, a person's descent determines or is intimately connected with the type of work they are afforded in the society. Victims of discrimination based on descent are singled out, not because of a difference in physical appearance or race, but rather by their membership in an endogamous social group that has been isolated socially and occupationally from other groups in the society.

I. COMMUNITIES WHERE DISCRIMINATION BASED ON WORK AND DESCENT IS EXPERIENCED

8. Instances of discrimination based on work and descent have been identified in many different social and cultural contexts. The manifestations of such discrimination commonly include prohibitions on intermarriage between socially or occupationally defined groups; physical segregation of communities; restrictions upon access to resources including land, water and other means of production; social prohibitions regarding physical contact such as sharing food or utensils; restrictions on access to education or segregation in educational facilities; restrictions on access to religious buildings and restrictions on participation in religious ceremonies. The most widespread discrimination on the basis of work and descent occurs in societies in which at least a portion of the population is influenced by the tradition of caste, including the Asian countries of Bangladesh, India, Nepal, Pakistan and Sri Lanka.

A. India

> "We must say that the National Human Rights Commission as well as the UN General Assembly should recognize that caste, as an institution itself, is a source of gross violation of human rights. Therefore it must be treated on a par with the existence and operation of racism and apartheid. The caste system and the equally obnoxious practice of untouchability must be taken seriously by the Indian and international communities and administrative bodies." - Interim Observations and Recommendations of the Jury of the National Public Hearing on Dalit Human Rights Violations, Chennai, April 2000.[1]

9. In 1937, Dr. B.R. Ambedkar, a learned and respected Indian leader and advocate of the rights of untouchables - or Dalits, as he called them - and himself an untouchable, announced that he had made a momentous decision to renounce the religion of his birth, Hinduism, because he traced a great social injustice in contemporary Indian society, namely the caste system, to

Hindu scriptures. Mahatma Gandhi, the spiritual leader of India, who was moved by the plight of the untouchables, was himself not prepared to blame Hinduism for the appalling discrimination against millions of Indians by other Indians. In a response to Dr. Ambedkar, the Mahatma said:

> "Caste has nothing to do with religion. It is a custom whose origin I do not know and do not need to know for the satisfaction of my spiritual hunger ... The law of Varna teaches us that each one of us earns our bread by following the ancestral calling. It defines not our rights but our duties. It also follows that there is no calling too low and none too high. All are good, lawful and absolutely equal in status."[2]

10. The Mandal Commission on the reservation of government jobs for Scheduled Tribes and Other Backward Classes in its 1980 report said of the caste system: "The social ranks and their respective duties, ordained by God for humanity, were intended to remain fixed and unmovable. Like the limbs of the body they cannot properly exchange either their place or function."[3]

11. The debate as to whether caste is or is not derived from Hindu scriptures need not detain us because 85 per cent of India's 1 billion people remain Hindu. Only a few million followed Dr. Ambedkar and became Buddhists. Lesser numbers became converts to Christianity and Islam. India is a stratified or compartmental society not based on class but on descent or occupation. It has been so for many thousand years. Dr. Ambedkar, as Minister of Law and Chairman of the Drafting Committee of the Constituent Assembly, was responsible for the many provisions in the Constitution intended to fulfil the promise in the preamble to secure to all citizens justice and equality of status and opportunity.

12. Besides untouchables, there are other underprivileged segments of Indian society who are grouped as Scheduled Tribes and Other Backward Classes and they number many millions. Scheduled Tribes are distinguished by tribal characteristics such as social, religious, linguistic and cultural distinctions. In addition, they are concentrated in certain geographical areas. While they are officially recognized as deserving of special treatment, the policy towards them is to effect improvements of their conditions while at the same time preserving their distinctiveness and giving them a measure of autonomy. In the case of Other Backward Classes there is the initial difficulty of identifying the persons who fit the description.[4]

13. They appear to include all religious minorities who are economically poor and lacking in educational opportunities. The Mandal Commission report identified 3,743 sub-castes as being socially and educationally backward, and found that Other Backward Classes constituted 52 per cent of the population. That was in addition to the Scheduled Castes/Tribes, which constituted a separate category of 22.5 per cent of the population. Dalits estimate that they constitute 19 per cent of the population, or 160 million people. The present study does not include Scheduled Tribes and Other Backward Classes as the discrimination against them, where it exists, cannot strictly be said to be based on work or descent.

14. Those who suffer discrimination based on descent or work have received different names. Official terms were "untouchables", "depressed classes" or "scheduled castes". For Gandhi, they were "Harijans" or "people of God" rather than "untouchables". Today they are known as Dalits, or "oppressed people" or "broken people".

15. Hindu society recognizes a caste hierarchy of four classes or varnas: Brahmins (priests and scholars); Kshathriyas (rulers and soldiers); Vaishyas (merchants and farmers); and Sudras (servant class). The Sudras, the lowest caste, are seen as persons who exist to serve the higher castes or "twice born". Servility is their badge and with it loss of dignity. According to some researchers there were upper Sudras and lower Sudras, depending on the work they performed. Artisans, carpenters, barbers, washermen and the like belonged to the former while those engaged in unclean work such as sweepers, scavengers, cobblers, cremation workers, hide and leather workers, agricultural labourers, toddy tappers* belonged to the latter. Those considered to be at the lower end of the Sudras are not in fact Sudras but are untouchables who are outside the caste system or "outcastes", or they constitute a distinct fifth caste.

16. In the mind of the upper castes untouchables are polluted by their work and polluting to others by contact which must therefore be avoided at all costs. A corollary is pointed out by the Mandal Commission: "The real triumph of the caste system lies not in upholding the supremacy of the Brahmin, but in conditioning the consciousness of the lower castes in accepting their inferior status in the ritual hierarchy as part of the natural order of things."[5]

17. Untouchability conveys "a sense of impurity and defilement. It implies certain socio-religious disabilities. It includes customs, practices sanctioned by the rigid Indian caste system whereby persons belonging to the Scheduled Castes were debarred from entering Hindu temples, public places, streets, public conveyances, eating places, educational institutions, etc."[6] There are other disadvantages - segregation in colonies in the village, denial of land rights, low wages for manual work, denial of access to services, e.g. by barbers and washermen, to health care and education. Untouchables belong to castes which have the lowest ritual standing and often the most depressed economic condition.

18. In the course of time occupations may have changed and many Dalits are now engaged in agriculture as landless labourers, as this activity has been opened to all. But this is not so in the case of other occupations to which access is not permitted by caste traditions. It is not merely the indignities heaped on Dalits that make them an oppressed people. Because of the social ostracism and economic deprivation they suffer, they often fall prey to the most serious forms of persecution in their society, including killings, mutilation, rape, arson, destruction of property and other forms of violence (sometimes regrettably by State agents) when they assert their rights.

19. The Government of India has taken several steps to prohibit the practice of untouchability. First, and most importantly, the Government has recognized the existence of the problem. Second, the Government has made determined efforts to deal with it. The

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* Men who tap the sap of palm trees, used for drinking and the brewing of spirits.

Constitution of India in its Bill of Rights (Part III), besides guaranteeing to all citizens the basic civil and political rights and fundamental freedoms has special provisions that are directed at the practice of caste discrimination:

(a) Article 15 prohibits subjection to a disadvantage based on caste with respect to access to shops, public restaurants, etc. or to the use of wells, roads and public places maintained out of State funds;

(b) Article 16 prohibits discrimination on the ground of caste or descent in respect of employment under the State;

(c) Article 17 abolishes untouchability and prohibits its practice in any form;

(d) Article 23 prohibits forced labour and discrimination on the ground of caste when imposing compulsory service for public purposes;

(e) Article 29 (2) prohibits denial of admission to any educational institution on the ground of caste;

(f) There are also positive duties imposed on the State to redress imbalances due to past injustices against untouchables. Article 15 (4) permits the State to make special provisions for the advancement of any socially and educationally backward class of citizens, including Scheduled Castes;

(g) Article 16 (4) permits the State to reserve appointments for members of backward classes not adequately represented in the State services.

20. Articles 15 (4) and 16 (4) recognize beneficial discrimination or protective/compensatory/preferential discrimination, or simply affirmative action. Indeed, in the governance of the country the State is enjoined by a directive principle of State policy (art. 46) to "promote with special care the educational and economic interests of the weaker sections of the people, and in particular of the Scheduled Castes and the Scheduled Tribes, and to protect them from social injustice and all forms of exploitation". But it is important to note that in the implementation of these provisions the efficiency of the administration is not to be sacrificed (art. 355).

21. Other provisions in the Constitution addressing caste discrimination are:

(a) Article 325 which prohibits disfranchisement on the ground of caste;

(b) Articles 330 and 333 which provide for reserving of seats for members of Scheduled Castes and Scheduled Tribes in Union and state legislatures according to the Scheduled Caste population in each constituency;

(c) Article 338 which mandates the appointment of a National Commission for Scheduled Castes and Scheduled Tribes. The Commission has been appointed and investigates and monitors all matters relating to the safeguards provided for Scheduled Castes;

(d) Article 341 which makes possible the legal identification of Scheduled Castes or untouchables by means of lists prepared for each state and union territory. The list, when published by the President, is final as to the castes or groups within castes deemed to be Scheduled Castes. The current state and union lists, when totalled, contain more than 1,000 castes but, given the fact that the same castes appear in the different state lists, the estimate given of 76 Scheduled Castes is probably correct.

22. To bolster the constitutional provisions, India has passed several laws:

(a) The Protection of Civil Rights (Anti-Untouchability) Act, 1955, strengthened by an amendment in 1973, punishes offences that amount to the observance of untouchability, such as prohibiting entry to temples or insulting someone on the basis of his caste;

(b) The Bonded Labour (Abolition) Act, 1976 aims at the release of labourers (usually Dalits) who work in slave-like conditions in order to pay off a debt due to a high caste employer, by cancelling any outstanding debt and prohibiting the creation of new bondage agreements;

(c) The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. This important law was needed because of the high incidence of recurrent acts of violence against helpless Dalits throughout the country. Eighteen atrocities are listed, including violence against women, dispossession of a Dalit of his land, mischief by fire and destruction of property. Penal Code offences carrying a punishment of 10 years' imprisonment if committed against a member of a Scheduled Caste are punishable by imprisonment for life. The offences are cognizable and non-bailable. There are special courts to provide speedy trials and special prosecutors to conduct cases. In 1999 rules were enacted under the Act to strengthen the investigation process and make provision for payment of compensation to victims;

(d) The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993. A special law was considered necessary to deal with the most distressing discrimination based on work and descent. There are an estimated 800,000 people, mainly women, who are engaged in cleaning dry latrines using the most primitive methods. The law itself describes this as a "dehumanizing practice" and is intended to make it obligatory to convert dry latrines into water-seal latrines. For the implementation of the Act the National Commission for Safai Karamcharis was appointed. In its 1997 report the Commission found that manual scavengers are "totally cut off from the mainstream of progress and are still subjected to the worst kind of oppression and indignities". What is more pathetic is the fact that manual scavenging is still largely a hereditary occupation. Safai Karamcharis are no doubt the most oppressed and disadvantaged section of the population.[7] There is unfortunately evidence that manual scavengers are considered untouchable by other untouchables;[8]

(e) Land reform laws to redistribute land to the landless.

23. It is an impressive list of the actions that have been taken by the Government of India. That improvements have taken place cannot be doubted and credit should probably go to the National Human Rights Commission, the National Commission for Women, the Scheduled

Castes and Scheduled Tribes Commission and the National Commission for Safai Karamcharis. A micro-level study in the States of Karnataka, Gujerat, Andra Pradesh and Orissa has led a scholar to conclude that:

> "Like other institutions, caste- and untouchability-based discrimination in the Indian society has undergone change. The practice of untouchability and resultant discrimination has reduced in the public sphere, like panchyat offices, schools, use of public roads, public transport, health and medical services, services of shops (for buying goods) and services rendered by the tailor, barber, eating places and tea shops in large villages and urban areas. But even here discrimination in various subtle forms prevail."[9]

24. If in urban areas it is more the hidden or invisible discrimination that a Dalit would encounter, in rural areas where three fourths of the Dalits live open discrimination in all its forms is fairly widespread. The overall picture is depressing. In school education there is a marked literacy gap between the Scheduled Castes and the rest of the population. It is reported that reserved quotas in the universities are not filled, especially in the technical and professional courses. There is reportedly poor representation of Scheduled Castes in teaching posts and caste clustering. There has been inadequate distribution of lands among the Scheduled Castes promised under the Ceiling of Land Acts. The shame of bonded labour remains for millions, including a large number of children. The hideous occupation of manual scavenging continues except in a few states. If reports are to be believed no real effort has been made to improve the conditions of work for these wretched people who out of sheer necessity find that it is their lot to clean dry latrines.

25. The reservation of quotas in government employment and education has run into the vexed problem of having to determine whether caste alone should be the test or whether caste should be combined with economic need. Quota reservations in state employment are being filled in lower category jobs such as sweepers, peons and clerks. In the absence of quotas there is hardly any representation in the defence forces, scientific establishments and the judiciary. The Scheduled Castes have not benefited from the economic progress made in the country in the 50 years since independence because there has been no policy in the allocation of resources. In the rapidly growing private sector there does not seem to be any opportunities for advancement for members of Scheduled Castes.

26. At the same time atrocities are being committed almost daily against Dalits and they go unpunished. These have been researched and documented, mainly by Dalit organizations, in several publications in horrifying detail.[10] The laws are there, but there is a clear lack of will on the part of law enforcement officers to take action owing to caste prejudice on their part or deference shown to higher-caste perpetrators. The Supreme Court in State of Kerala vs. Appu Balu said: "More than 75 per cent of the cases under the (SC/ST) Act are ending in acquittal at all levels."[11] What is frightening is that the atrocities committed - murder, rape, mutilation, arson, etc. - are not only isolated acts but could even be acts of mass savagery committed by militia groups employed by the higher castes.[12] The inability of the police and courts to deal with these crimes has had a backlash effect on young Dalits who also themselves have formed armed groups or Naxalites.

27. The present situation in India could not have been better expressed than in the words of the National Scheduled Caste and Scheduled Tribes Commission:

> "The task ahead is clearly, therefore, to focus on the basic needs and requirements of SCs/STs and give them the social dignity and the economic capability to come at par with other sections of the society and become part of the mainstream which had been the charter visualized by the Constitutional makers 50 years ago. Such a strategy would not only control the feeling of alienation, frustration and rising military and civil strife but would also make the SCs/STs active partners in nation building."

B. Sri Lanka

28. In Sri Lanka there are two caste systems, one for the Sinhalese and the other for the Tamils. Although they both have their origin in India, the Sinhalese caste system is not linked to the Hindu varna. It was an aspect of a feudal society which divided people "according to Descent and Blood"[13] or according to their hereditary roles and functions. The caste system was a secular hierarchy. The stratification took into account as many caste and sub-caste groups as there were feudal services and functions or temple services to perform in a disputed hierarchical order. There were no non-untouchables in the Indian sense. Social distance was practised but the notion of pollution hardly existed. As an American scholar concluded, "The absence of the Hindu concept had rendered the Sinhalese caste system mild and humanitarian when judged by Indian standards."[14]

29. The exception is the caste of Rodiyas or Rodi (meaning "filth") from very early times. Many legends surround their origin, all agreeing that they were banished for a heinous crime and condemned to a life of begging or, more accurately, soliciting for alms. They were denied land and work and subjected to many disadvantages and degrading treatment. They were a despised lot; even in the middle of the nineteenth century they suffered "untouchability with a vengeance". They were always a small community of about 500 families living mainly in the central highlands in their own colonies of huts devoid of amenities.

30. During 150 years of British rule when caste distinctions were not officially recognized, there was a high degree of mobility from low caste groups to positions of social standing through entry into professions, business and politics. Desertions from traditional caste occupations were easily achieved through education, and caste became a status concept.[15]

31. In the case of the Rodi the process has been much slower. Through the efforts of the Backward Communities Development Board, Rodi children were able to attend village schools. Government land was given to them for cultivation. While official sympathy was shown to the Rodi the prejudices of villagers were not easily overcome; however, there is no evidence of any atrocities committed against the Rodi. Farming and casual labour have provided some opportunities but they have not been completely emancipated from the economic point of view: for many Rodi the old life outside the social system has continued.[16]

32. The caste system of the Tamils, who are mostly Hindus, is also occupation based. Tamils have high and low caste groups which show a stronger concept of pollution and social distance.

At the bottom of the caste hierarchy are three castes of untouchables who suffer social disadvantage more than others. While Pallas and Nalavas (descendants of former slaves) can work on upper caste land for wages or rent garden land from them, Paraiyars engage mainly in so-called unclean work.

33. While the numerically powerful Vellala or farmer caste is not inclined to loosen its dominant position in society over all other castes, upward mobility could not be prevented after American missionary schools were established in the nineteenth century and education was opened to all without caste distinction.[17] Descent is still important in Tamil society and prejudice is more openly shown. It is manifested publicly in acrimonious disputes over temple entry. Only a small number of temples are open to non-Vellala worshippers.

34. Recognizing that social disadvantages were imposed on people based on the accident of birth or the work they perform, the Prevention of Social Disabilities Act, 1957 was passed in 1957. The Act made it an offence for any person to discriminate against another on the ground of his caste in the matter of access to shops, public eating houses and hostels, public wells, hairdressing salons, laundries, cemeteries, places of worship, or for purposes of education and employment. In 1971 the Act was amended to strengthen its priorities and to impose heavier punishment. Initially there were some prosecutions in the North but there was a tendency for the police not to take action against violations. In a celebrated temple-entry case, the Act was challenged as interfering with customs and ancient usages that prohibited defilement of a Hindu temple by the entry of low-caste persons. This argument was rejected by the Supreme Court and Privy Council.[18]

35. The 1978 Constitution prohibits discrimination on the ground of caste (art. 12 (2)) and prohibits subjecting a person by reason of his caste to any disadvantage with regard to access to shops, public restaurants, etc. and places of public worship of his own religion. There are no affirmative action provisions as in India. Discrimination based on descent and work may not have disappeared, but there are no signs that it is a problem.

36. A recent allegation of discrimination based on descent is that made by Tamils of Indian origin employed mainly as tea estate workers in the hill country. With regard to wages, housing, sanitation, health and educational facilities, they were an oppressed group. Improvements have slowly been made as a result of government policies and powerful trade union action. Integration with the rest of society is more difficult owing to prejudice, but this is breaking down. There are signs of upward mobility through education and non-discriminatory laws. Caste distinctions exist among themselves and complaints have been made that workers (mostly Dalits) are kept out of trade union office by high caste supervisors. The citizenship laws enacted after independence rendered Indian Tamils, who numbered about 1 million, stateless, and they were denied voting rights. Subsequent laws based on agreements between the Governments of India and Sri Lanka have enabled them to acquire citizenship by registration without any distinction being made between them and others who are citizens by descent.

C. Nepal

37. Nepal has predominantly Hindu population and a caste system similar to that of India. About 21 per cent of the population of 22 million constitute the service castes

(untouchables/Dalits) who are engaged in traditional occupations with low status value. They range from artisans and singers to castes doing unclean work like scavenging and removing dead animals. What unites them is that they are subject to hurtful discrimination - segregation, exclusion from public institutions such as hostels, restaurants and milk cooperatives, or denied free access to water, schools and temples, on the one hand, and deprived of rights, facilities and opportunities given to others to improve their conditions, on the other.

38. Untouchability was declared illegal in 1963 but the practice was not made punishable until the onset of multi-party democracy in 1990. The Constitution of 1990 guarantees the fundamental rights of the people and makes any discrimination against untouchables punishable by law. The National Code that prohibited Dalits from entering temples and religious sites was declared invalid by the Supreme Court in 1993. The Government is committed to implementing policies aimed at the advancement of Dalits. Thus, the "Independent Downtrodden and Oppressed Community Council" was formed in 1998 with the objective of coordinating policies and supervising programmes to benefit Dalits. The Ninth Five-Year Plan adopted several specific policies and programmes for the socio-economic development of the Dalits, including in education, health, sanitation, training and capability enhancement, and employment.

39. While these winds of change are appreciated, Dalits complain that untouchability has not been eliminated, that there is unequal distribution of resources, that many of them lack agricultural land and that they remain economically and socially depressed. The Government has acknowledged that "for an overwhelming majority of people the caste system continues to be an extremely salient feature of personal identity and social relationships and, to some extent, determines access to social opportunities".[19] At the Asian Regional Preparatory Meeting for the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, held in Tehran in February 2000, the Government, whilst again admitting the problem of caste discrimination, declared that the issue should be addressed at the World Conference.

D. Japan

40. Japanese feudal society, which started 400 years ago and lasted till 1867, left a class structure that placed "humble people" at the bottom. They consisted of eta (extreme filth) and hinin (non-human). The eta were assigned such duties as disposing of dead cattle, leather production, being security guards and sweeping while hinin made their living as security guards, executioners and performers.[20] The Buraku, as they are now known, were subjected to intense prejudice and discrimination, forbidden to marry or have physical contact with common people as such contact was seen as "polluting" the higher classes. They were an outcast population confined to living in hamlets, now officially classified as Dowa districts. The people of a Dowa district consist of the original eta and hinin people and others who have moved there. The official figures are 4,442 Dowa districts with a total population of 1.2 million Burakumin, but the unofficial figures are 6,000 and 3 million, respectively. The discrimination is not only against those who work in traditional occupations.

41. Beginning with the Emancipation Edict, 1871, many laws have been enacted addressing the Buraku issue. Article 14 of the Constitution of 1946 states: "All people are equal under the law and there shall be no discrimination in political, economic or social relations because of race, creed, sex, social status or family origin." But a government report in 1965 conceded that the

Burakumin are "placed in such an inferior position economically, socially and culturally that their fundamental human rights are grossly violated even in present-day society and that, in particular, their civil rights and liberties which are assured to all people as a principle of modern society are not guaranteed in reality". The State's responsibility to solve the Buraku problem was accepted and special laws were passed in 1969, 1982 and 1987. The Law for the Measures for Promotion of Human Rights Protection, 1996, established a committee to analyse the extent of Buraku discrimination and make recommendations for human rights education and relief measures for victims.[21] The Law on the Promotion of Human Rights Education and Human Rights Awareness-Raising, 2000 was the result of a national campaign for the enactment of a fundamental law for Buraku liberation.

42. It is admitted that the living standard of Buraku people has improved, but discrimination in marriage and employment continues. Particularly hurtful is the use of derogatory terms in speech and writing. Also a matter of concern in the printing of lists of Buraku households with the names of the occupants, drawn up after private investigation and made available to big companies to prevent the employment of Burakumin. Government has enacted laws against such activities but the practice continues.[22]

E. Pakistan

43. Swat is an area of northern Pakistan which had a system of stratification of unequal social groups (qoum) that can be compared to the Hindu caste system, except that the people are Sunni Muslims. The concept of ritual pollution is absent, its place taken by notions of privilege and shame. The population of the area is about 500,000 and the people are dependant on subsistence agriculture. The groups are such as are to be found in an agricultural community, and at the bottom are despised people - sweepers, washermen, barbers and those who work with the guts of animals. There is pollution by occupation but caste status by birth does not prevent change of occupation. In ritual activities there is equality but in everyday situations a distinction exists.[23]

44. In Sindh Province there are about 1.8 million persons living in bondage as agricultural workers, the majority of whom are Dalits originally from India. A large number of Dalit families work in the brick kiln industry, also under conditions of total bondage. Bonded families are virtual prisoners and not permitted to leave until the debt is paid. In 1992 the Bonded Labour (Abolition) Act was passed but observers note that even when the national police take action state prosecutors fail to file charges.

II. VIOLATIONS AGAINST WOMEN AND CHILDREN

45. In addition to suffering discrimination on the basis of work and descent, Dalit women and girls also suffer gender discrimination. Women in Dalit communities in Asia are poorly educated and subjected to gruelling labour and many forms of violence, including trafficking and prostitution. Dalit women are consistently subjected to physical abuse and sexual exploitation by higher caste landlords. Women are raped, mutilated and murdered during caste violence. Dalit women do not regularly report incidents of sexual assault because of entrenched biases at every stage of the process.

46. Most girls and women in India's and Nepal's urban brothels are from lower caste, tribal or minority communities. The practice of devadasi involves the marriage or dedication of a pre-pubescent low-caste girl to a deity or temple. Once dedicated, the girls are unable to marry; their role is to serve as prostitutes to the higher caste men in the village. Some states in India have passed laws prohibiting the practice of dedication but they are reportedly not well enforced.

47. India has tried to remedy discrimination against women by adopting a constitutional amendment in 1993 that provided for one third of all panchyat, or village council, seats and village chief positions to be reserved for women and also reserved a percentage of those for women from the lowest rungs of the caste system. In Nepal the Constitution requires that 5 per cent of candidates put up by national parties be women, and in local government 5 per cent of the seats are reserved for women. It would appear, however, that Dalit women are not represented at the national or local level.

III. CONCLUDING REMARKS

48. The people described in this paper are estimated to number 250 million. It is a staggering number by any account. They have inherited a life of burdens and few rights, a life of continuous discrimination, a life without dignity. What wrongs have they committed? The world may have changed around them but not for them. They are ruled by traditions which are hundreds, and sometimes even thousands of years old, traditions that cannot be justified today. It is sometimes said that they are not a race as understood in the international instruments. But they are in fact a race of broken people with commonalities that bring them together. They speak in many tongues but with one voice to ask for social justice and good governance that will end the miseries in their daily lives. They are a people subject to violations of their human rights. It is the responsibility of the respective States to endeavour, not merely the passing of remedial laws, but by positive State action, to ensure that these violations do not go unpunished. The strict enforcement of the law can assist the other ongoing educational processes in society to bring about attitudinal changes in the direction of tolerance, compassion and justice.

49. The focus of this paper has been countries in Asia. At the time the resolution was discussed in the Sub-Commission it was mentioned the problem was not limited to Asia alone and that it existed in some parts of Africa and perhaps in South America. The author has not been able to include in this paper the situation in these other areas because of constraints of time and lack of access to relevant material.

50. This paper, which is introductory in nature, will hopefully demonstrate that there is a serious problem of human rights violations arising from work and descent. The many complaints of discrimination voiced at the United Nations General Assembly, the Human Rights Committee, CERD and the Sub-Commission itself merit further study, with the assistance of the Governments of the countries concerned.

Notes

[1] Dalit Human Rights Violations. vol. I, 314. The Jury consisted of the following eminent persons: Justice K. Punniah, former Judge, Andra Pradesh High Court; Justice H. Suresh, former Judge, Bombay High Court; Dr. Mohini Giri, former Chairperson, National Commission for Women; Justice Amir Das, former Judge, Patna High Court; Dr. Vasanthi Devi, former Vice-Chancellor, MS University, Tirunelveli; Ms. Kumud Pawde, Dalit Writer; Ms. Sona Khan, Advocate, Supreme Court; Ms. Rani Jethmalani, Advocate, Supreme Court; Dr. R.K. Nagak, Founder and Director, NISWASS.

[2] Dr. Ambedkar's address, Gandhi's articles published in the Harijan and Dr. Ambedkar's reply are published in Annihilation of Caste (3rd ed.), 1987.

[3] Quoted in Rev. Dr. James Massey's paper, "Reflections and Remarks - Occupation and Descent-Based Discrimination: Identification of Affected Communities in Various Countries" presented at the Global Conference against Racism and Caste-Based Discrimination, New Delhi, March 2001.

[4] Mark Galanter, Competing Equalities - Law and the Backward Classes of India, 1984.

[5] See note 3 above.

[6] Mathew and Chacko, The Law on the Abolition of Untouchability. Indian Social Institute, New Delhi, 1996.

[7] See Human Rights Watch, Broken People: Caste Violence against India's "Untouchables", March, 1999.

[8] Broken Promises and Dalits Betrayed: Black Paper on the Status of Dalit Human Rights, National Campaign on Dalit Human Rights, 2000.

[9] Professor Sukhadeo Thorat, "Hindu social systems and human rights of untouchables: Theory and Evidence on Violation", paper presented at the Global Conference against Racism and Caste-Based Discrimination, New Delhi, March 2001.

[10] In addition to the publications cited in the present report, organizations such as Human Rights Watch, Global Action for Dalits and the National Campaign on Dalit Human Rights have also received from individuals compilations of atrocities committed in various states.

[11] 1993 Cr. L.J. 1029.

[12] See Frontline, 26 February and 12 March 1999.

[13] Robert Knox, An Historical Relation of Ceylon, 1681.

[14] Ryan, Caste in Modern Ceylon, 1953, p. 17.

[15] A.P. Kannangara, "The Rhetoric of Caste Status in Modern Sri Lanka" in Peter Robb, Society and Ideology, 1995.

[16] M.D. Raghavan, Handsome Beggars - The Rodiyas of Ceylon, 1957.

[17] Michael Banks, "Caste in Jaffna" in Aspects of Caste in South India, Ceylon and North-West Pakistan, E.R. Leach (ed.), 1960.

[18] Suntharalingam vs. Herath 72 NLR 54, 74 NLR 457.

[19] Report of Nepal under article 9 of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD/C/337/Add.4), para. 22, May 1999.

[20] International Movement against All Forms of Discrimination and Racism (IMADR), History of Buraku Discrimination in Japan, 2001.

[21] See an account of the laws in Emily A. Su-lan Reber, "Buraku Mondai in Japan: Historical and Modern Perspectives and Directions for the Future", Harvard Human Rights Journal, vol. 12 (1999), p. 298.

[22] In general see also Kenzo Tomonaga, "A Critique Based on the Present State of Discrimination Against Buraku People" in the Counter-Report to the Fourth Periodic Report by the Government of Japan (Buraku Liberation and Human Rights Research Institute 1998).

[23] This account is based on Frederick Barth, "The System of Social Stratification in Swat, North Pakistan" in Leach, op. cit.